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### BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES
INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENTS
WITH FOREIGN POSTAL OPERATORS 1
CANADA POST CORPORATION - UNITED STATES POSTAL
SERVICE BILATERAL AGREEMENT (MC2010-35)
NEGOTIATED SERVICE AGREEMENT

Docket No. R2018-2

# NOTICE OF UNITED STATES POSTAL SERVICE OF MODIFICATION THREE TO CANADA POST CORPORATION – UNITED STATES POSTAL SERVICE MULTI PRODUCT SERVICE AGREEMENT

(November 15, 2019)

The United States Postal Service (Postal Service) hereby provides notice of Modification Three, a negotiated extension of terms and market dominant rates, of the agreement filed in this docket, a bilateral agreement between the Postal Service and Canada Post Corporation (the Agreement). For rates in effect in 2020, the parties will temporarily depart from their usual schedule for negotiation of a two-year bilateral agreement. As a result of decisions taken by the Third Extraordinary Universal Postal Union (UPU) Congress, the Postal Service will implement self-declared E-Format rates beginning on July 1, 2020, and the parties expect to take account of this change in baseline rates in a subsequent modification or successor bilateral instrument.

For present purposes, the parties agreed to extend the existing terms of their bilateral agreement through June 30, 2020, with no change to the negotiated market dominant rates, which include inbound tracked packet rates. As of July 1, 2020, the inbound packet service will transfer to the competitive product list.

The modification to the Agreement and rates effective from January 1 through June 30, 2020, are filed in this docket under seal without redactions. Public versions of these documents are filed with this notice. The changes to competitive rates encompassed by this modification will be filed in related PRC Docket No. CP2018-96.

The Postal Service maintains that certain portions of the modification and related rates should remain confidential. The Postal Service incorporates by reference its Application for Non-Public Treatment of Materials filed under seal, which was previously filed in this docket.<sup>1</sup>

For the reasons discussed, the Postal Service respectfully requests that Modification Three of the Agreement be favorably reviewed by the Commission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE By its attorneys:

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<sup>&</sup>lt;sup>1</sup> See Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, at Attachment 1 (Application of the United States Postal Service for Non-Public Treatment of Materials), Docket No. R2018-2, November 17, 2017.

## MODIFICATION THREE TO THE CANADA POST CORPORATION – UNITED STATES POSTAL SERVICE BILATERAL AGREEMENT

This "Modification Three" amends the Canada Post Corporation – United States Postal Service Bilateral Agreement between the United States Postal Service ("the Postal Service" or "USPS"), an independent establishment of the Executive Branch of the Government of the United States, having its headquarters in the City of Washington, District of Columbia, and Canada Post Corporation ("Canada Post" or "CPC"), a corporation incorporated under the *Canada Post Corporation Act*, R.S.C. 1985, c. C-10 as amended, and having its head office in the City of Ottawa in the Province of Ontario, which was executed by both the Postal Service and Canada Post on November 11, 2017 ("the Agreement"), as modified by Modifications One and Two.¹ The USPS and CPC may be referred to individually as a "Party" and jointly as the "Parties."

WHEREAS the Parties are not able to negotiate comprehensive rates in time to replace the terms of the current bilateral agreement between them, the Parties agree to extend the term of the Agreement and provide each other interim rates to continue their operations without disruption to their customers in accordance with the terms below.

### **Definitions--** For purposes of this Modification Three:

- (a) "southbound rates" include any rates for items originating in Canada and delivered in the United States, as well as international business reply service or international merchandise return service for which the return leg originates in the United States, and such rates are classified as "market dominant" or "competitive" under the Mail Classification Schedule, and
- (b) "northbound rates" include any rates for items originating in the United States and delivered in Canada, as well as international business reply service or international merchandise return service for which the return leg originates in Canada.
- (c) "Commission" means the Postal Regulatory Commission and may also be referred to as the "PRC."

#### **Conditions Precedent**

- (a) At the time of signing this Agreement, CPC represents and warrants that it has obtained all necessary approvals for rates set out in this Modification Three.
- (b) The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by one or more internal and external bodies that have oversight responsibilities (hereinafter "Conditions Precedent"), and such approvals may apply to certain mail flows after the Effective Date of the Agreement set forth in Article 21, as amended by this Modification Three. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS senior management, the Governors of the USPS, the Board of Governors of the USPS, and the U.S. Postal Regulatory Commission. At the time of signing this Modification Three, the USPS represents and warrants that the only Conditions Precedent remaining to be fulfilled are the rate reviews required from the PRC for the southbound rates that have been revised by this modification from those previously stated in the Agreement or another prior modification.

Attachment 1 Rates

Modification One was executed by Canada Post on December 11, 2017, and by the USPS on December 12, 2017. Modification Two was executed by representatives of both CPC and the USPS on August 28, 2019. 2018-2019 CPC-USPS Contractual Bilateral Agreement 1 November 12, 2019 Modification 3

- (d) The Parties acknowledge that the rates in connection with certain flows might not be approved by the PRC. Until such time as the Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or CPC and no benefit or rights granted through this Agreement or portion thereof, as appropriate, shall inure to either Party unless and until the Conditions Precedent shall have been fulfilled.
- (e) In the event that the Conditions Precedent are not fulfilled, the USPS and CPC shall have no liability, which shall include no obligation to pay costs associated with any action taken by CPC prior to the fulfilment of Conditions Precedent. Further, in the event of the failure of any Condition Precedent, neither Party shall be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or any cost incurred by either Party attributable to such non-approval such as attorney's fees.

### **Bilateral Modification Three Rates**

- (a) The rates stated in Attachment 1 replace the rates for the same products as stated in Attachment 1 of the Agreement and in Modification One, wherever they appear, for the term of this Modification Three.
- (b) The rates on page 6 in Attachment 1 represent rates resulting from the applicable provisions of the Universal Postal Convention. As they are not negotiated rates, they appear here only for the convenience of the Parties and are operative as provided by the terms of the Universal Postal Convention.
- (c) All other terms and conditions of the Agreement, as amended by Modification One, remain in effect.

### 4. Effective Date

- (a) The Effective Date for the rates, as amended by the rates stated in this Modification Three, shall be January 1, 2020. The Agreement, as amended by Modifications One and Three, including the Attachments shall bind the Parties for the period beginning on the Effective Date and ending on June 30, 2020 (the "Extended Term"), unless terminated earlier in accordance with Article 22. "Term," wherever it is used in the Agreement, Modification One, and the Attachments, shall be replaced by "Extended Term."
- (b) USPS will inform Canada Post once the Postal Regulatory Commission has completed its review of the southbound rates, which may occur on different dates for southbound market dominant and competitive rates.

### 5. Regulatory Notice

As required by law and in other subsequent regulatory filings, this Modification Three and any supporting documentation and related data may be filed with the Commission in docketed proceedings (including Commission Docket numbers R2018-2, CP2018-96, ACR2019, and ACR 2020). The USPS shall also furnish a copy of this Modification Three to the U.S. Department of State as required by law, and the USPS may also be required to provide copies of this Modification Three to other United States governmental agencies exercising their respective oversight, law enforcement, or regulatory jurisdiction. Canada Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, U.S. Code of Federal Regulations, Part 3007, Subpart B, including Sections 3007.201 and 3007.204, and also on the Commission's website at https://www.prc.gov/docs/105/105579/Order%20No.%204679.pdf . At Canada Post's request, the USPS will notify Canada Post of any other docket numbers of other Commission proceedings, if any, besides those identified above, used in connection with the filing of this Modification Three and related data. As this Modification Three is intended to be a part of the Agreement, Modification Three is subject to the procedure set forth in Article 13 of the Agreement. Therefore, the Parties intend to confer regarding the redactions to appear in place of the part of this Modification Three identified as non-public before its public filing with the Commission.

### 6. Counterparts

The Parties may execute this Modification Three in one or more counterparts (including by facsimile or by electronic means, such as pdf format). Both Parties need not sign the same counterpart. All counterparts, taken together, shall constitute one original instrument.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of the Modification Three.

United States Postal Service	Canada Post Corporation				
Robert H. Ramis J.	Signature Signature				
Robert H. Raines, Jr. Managing Director, Global Business	Rod Hart Chief Customer and Marketing Officer				
///////9 Date	//////////////////////Date				

### ATTACHMENT 1 RATES

### Rates for the Contractual Bilateral Agreement between Canada Post Corporation and the United States Postal Service

Terminal dues rates listed in the tables included below are product stream rates per item and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. The rates are set on the conditions that current work sharing arrangements are substantially maintained. Any changes to current work sharing (i.e., sortation and preparation) arrangements will be subject to negotiation and mutual agreement first being reached including, but not limited to, agreement as to any impact on pricing.

### 2019 - 2020 Bilateral Rates

### Bilateral Rates

Service			2019 Rates*** 2020		2020 F	Rates***	
Northbound		Stream	item	kg	item	kg	
Tracked Letter Post*							
Registered							
Parcels							
Express Mail Service (EMS)							
EMS							
EMS Bag							
EMS Container							
nercial EMS Bag							
Commercial EMS Container							
Commercial EMS							
Commercial EMS							
Merchandise Returns							
IMRS Parcels (CPC pays USPS)							
IMRS Parcels (CPC pays 05F5)							

Service		2019 Rates***		2020 Rates***		
Southbound	Stream	item	kg	item	kg	
Tracked Letter Post						
ePacket Bag*						
ePacket Container*						
IPA ePacket Bag						
IPA ePacket Container						
Registered						
Parcels						
Expedited Parcels Bag						
Expedited Parcels Container						
Priority Parcels Bag						
Priority Parcels Container						
Express Mail Service (EMS)						
EMS Flat Tray						
EMS Bag						
EMS Container						
EMS Bag						
EMS Container						
Merchandise Returns						
IMRS Parcels (USPS pays CPC)**						

### 2019 - 2020 Non-Bilateral (UPU) Default Rates

The rates in the tables below appear for informational purposes only and are not established by this Agreement. The rates listed below are the base terminal dues rates for 2019 and through June 30, 2020 established by the UPU through the Convention Article 29.

#### Non-Bilateral UPU Rates

Service			2019 Rates**		2020 Rates**		
Northbound	Stream	UPU Format	item	kg	item	kg	
Non-Tracked Letter Post*							
Priority Letter Tray							
Priority Flat Tray							
Priority Packet Bag							
Priority Packet Container							
Priority M-Bag							
IPA Letter Tray							
IPA Flat Tray							
IPA Bag							
SAL Letter Tray							
SAL Flat Tray							
SAL Bag							
SAL Container							
SAL M-Bag							
Non Billable Services							
Empty Equipment							
Return to Sender - Letter Post							
Return to Sender - Parcels							

Service			2019 Rates**		s** 2020 Rates*		es** 2020 R	lates**
Southbound	Stream	UPU Format	item	kg	item	kg		
Non-Tracked Letter Post*								
Priority Letter Tray								
Priority Flat Tray								
Priority Packet Bag								
Priority Packet Container								
Priority M-Bag								
Priority IPA Letter Tray								
Priority IPA Flat Tray								
Priority IPA Bag								
Priority IPA Container								
Non-Priority Flat Tray								
Non-Priority Large Container (Flat Trays)								
Non-Priority Large Container								
Non-Priority M-Bag								
Non Billable Services								
Empty Equipment								
EMS Returns								
Missent - US to US								
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### **Specifications of Mail Product Categories and Formats**

The rates for the stream categories above shall be based upon the following format and product definitions:

Letters Any piece which has:

- a length less than or equal to 292 mm (11 1/2 inches) and - a width less then or equal to 155 mm (6 1/8 inches) and

- a thickness not less than 0.1778 m (0.007 inch) thickness, or not more

than 6 mm (1/4 inch)

- and which has a weight of less than or equal to 2 kilograms (3.5 ounces for USPS).

Flats Any piece exceeding any one of the maximum limits for a Letter and which has:

a length less than or equal to 381 mm (15 inches) and
a width less than or equal to 292 mm (12 inches) and
a thickness less than or equal to 20 mm (3/4 inch)

- and which has a weight of less than or equal to 2 kilograms

Packets Any piece exceeding any of the maximum size limits for a Flat,

but within the maximum size limits as set forth in the Universal Postal

Convention Regulations Articles 17-102 through 17-105 and which has a weight of

less than or equal to 2 kilograms

Parcels Any piece corresponding to size limits as set forth in the Universal

Postal Convention Regulations Article 17-204 and which has a

weight of less than or equal to 30 kilograms

M-Bags Printed matter in a direct sack to a single foreign address, subject to the Reservations of

Canada and the United States of America in Universal Postal Union Article R XVI, which has a

weight less than or equal to 30 kilograms

Registered Mail

Any piece that meets the size and weight dimensions of Letters, Flats, or Packets and bears a

Registered label on the mail piece

EMS See Attachment 3

Xpresspost-USATM

(EMS) All documents or packages which bear Xpresspost-USA identification, and which bear an EMS

logo and an S-10 EMS Unique identifier barcode and which meets the dimensions as per

Attachment 3.

Expedited Parcel – USATM

(Priority Mail) All air parcels corresponding to size limits as set forth in the Universal Postal Convention

Regulations Article 17-204 and which have a weight of less than or equal to 30 kilograms.

### Rates for International Business Reply Service (IBRS)

Definition and details regarding International Business Reply Mail (IBRS) can be found in Attachment 7 of the 2018-2019 Canada Post-United States Postal Service Contractual Bilateral Agreement.

Rates: The rate USPS will be invoiced by CPC is according to the following schedule.



